

Introduction to Immigration Law and the Rights of Noncitizens

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Class Overview

- I. Immigration Law Basics: history, sources, terminology and definitions
- II. Immigrant vs. Non Immigrant Classifications; Exclusion and Removal, Citizenship
- III. Human Rights/Humanitarian Aspects of Immigration Law
- IV. Immigration Reform
- V. Rights of noncitizens

I (a). History of U.S. Immigration Law

- Open borders initially until the 1870s-1880s-
beginning of federal controls on immigration
- Early to mid 20th Century: beginning of
comprehensive federal immigration laws
- 1952- Immigration and Nationalization Act,
("INA") imposed national origins quotas,
[abolished in 1960s-1970s, but numerical
quotas remain,];INS created
- 1980 –Refugee Act –first humanitarian

History of U.S. Immigration Law, cont'd.

- 1986: Immigration Reform and Control Act “IRCA”, Immigration Marriage Fraud Amendments “IMFA”
- 1996: AEDPA expanded deportation grounds, and altered procedures for noncitizens found in U.S. unlawfully; PRWORA restricted immigrant welfare benefits; IIRIRA regarding apprehension and speedy removal of noncitizens.

History of U.S. Immigration Law, cont'd.

2002: Homeland Security Act: “HSA” dissolved INS and transferred functions to Dept of Homeland Security
“DHS” split in 3:

- Citizenship and Immigration Services “CIS”,
- Customs and Border Protection “CBP”, and
- Immigration and Customs Enforcement “ICE”.

2005: Real ID Act- includes limits on habeas corpus for removal orders, and requirements for driver’s licenses.

I (b) Authority/Sources of Federal Immigration Law

- Transfer to federal government from Great Britain upon independence.
- Federal law sovereignty principles
- United States Constitution
- Most Immigration law comes from the Immigration and Naturalization Act (“INA”) found at 8 U.S.C. 1101 et. seq.

I (c) Terminology and Definitions

INA refers to non citizens as “aliens.”

There are main “alien” categories:

1. Immigrants: all who are not immigrants.
Intend to stay in U.S. permanently.

Other term, best known immigrant group:

LPRs: Legal Permanent Resident Aliens

2. Non Immigrants-INA 101(a)(15) def'n- in
the U.S. for a limited stay.

II (a). Immigrant Classifications

- Family sponsored –other than Immediate Relatives of United States citizens-four preferences:
 1. Unmarried sons and daughters of United States citizens (over 21);
 2. Spouses and unmarried sons and daughters of LPRs;
 3. Married sons and daughters of United States citizens;
 4. Brothers and sisters of citizens
- Employment based – five preferences-professionals, highly skilled or limited seasonal work
- Diversity – lottery, underrepresented countries

II (b). Non Immigrant Classifications

- Allow for temporary stays in U.S. under main categories such as: tourists, students, scholars, workers, skilled and unskilled, ambassadors, and recently enacted ones for trafficking crime victims, etc.
- Limited numbers.
- Usually alphabetical.,e.g. H-1

II (c). Exclusion and Removal

- Exclusion grounds apply when noncitizen will be entering and removal grounds apply when already present in U.S. Waivers may apply in some cases. Cancellation of removal may be a remedy for some. Very rare, have to show extreme hardship.
- Removal was formerly called deportation.
- Types generally are **criminal**, national security, health related, immigration related grounds, etc.

II (d). Citizenship

At birth: U.S. citizenship may be obtained by:

- Jus soli-citizenship based on birth in U.S.
- Jus sanguini-citizenship based on birth to at least one U.S. parent.
- Naturalization- acquisition of U.S. citizenship after birth. Usually need 5/3 years of L.P.R. status, good moral character, etc.

III. Asylum and Nonrefoulement

- Humanitarian view of immigration law
- Follows international law
- Standard: Past persecution or well founded fear of persecution on account of five enumerated grounds-race, religion, nationality, membership in a particular social group, or political opinion.

IV. Immigration Reform – Basic Terminology

- **Guest worker** - foreign worker who is permitted to enter a country temporarily in order to take a job for which there is shortage of domestic labor. E.g. Bracero Program, Gasterbeiter Program
- **Amnesty**- A pardon extended by the government to a group or class of persons; the act of a sovereign power officially forgiving certain classes of persons. • Amnesty is usually addressed to crimes against state sovereignty -- that is, to political offenses with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. E.g. 1986 IRCA USA Amnesty.

IV. Immigration Reform History

Immigration reform from 1994 had cut off migration flows-growth undocumented population

- Bush-Fox meeting 9/10/2001
- Immigration reform stalled post 9/11

Bush again opened discussions Jan 2004 re Guest worker proposal

IV. Immigration Reform - recent

- H.R. 4437–Sensenbrenner Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

Neither guestworker nor legalization included.

Border enforcement, criminalization of unlawful presence and assisting those here unlawfully, *inter alia*

IV. Immigration Reform, latest

- S.2611 “Comprehensive Immigration Reform Act of 2006.” passed May 2006 includes legalization provision and guestworker provisions. Also border security.
- July 2006 –Hutchison - Pence proposal - "self-deport" within 2 years and apply for a new kind of visa that would allow them to return to the United States quickly and work legally if a job awaits them. Would have to work for 17 years for U.S. citizenship. Border enforcement included and President needs to be certify border secure.

V. Rights of noncitizens – intro

- What power does Congress have to admit or exclude noncitizens?
- In Chae Chang Ping v. U.S. (1889), the Supreme Court stated that the power to exclude noncitizens is inherent in the notion of a sovereign state.
- Thus, a Chinese laborer who left the U.S. and returned with a valid entry permit from the U.S. government was excluded and the remedy would be with “the political department.” Thus, the power is viewed as plenary, very deferential.

V. Rights of noncitizens – other

- Equal Protection clause applies to those who are not U.S. citizens. *Yick Wo v. Hopkins*, 118 U.S. 356 (1896).
- Children of undocumented have the right to free public education. *Plyler v. Doe*, 457 U.S. 202 (1982).
- Undocumented workers have limited remedies under federal labor law, *Hoffman Plastics Compound, Inc. V. NLRB*, 535 U.S. 137 (2002).